



# UNITED STATES PATENT AND TRADEMARK OFFICE

37

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/376,811	02/28/2003	Herbert Barthel	WAS 0580 PUS	9035
22045	7590	11/02/2005	EXAMINER	
BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			WEBMAN, EDWARD J	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/376,811	Applicant(s) BARTHEL ET AL.	
	Examiner Edward J. Webman	Art Unit 1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 12-15 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1616

Applicant's election with traverse of Group I and w/o/w emulsions in the reply filed on 8/19/05 is acknowledged. The traversal is on the ground(s) that the emulsion does not require the particulate in any particular phase and that the method of using requires the claimed emulsion. This is not found persuasive because the claimed method requires addition of particulate to a particulate phase and the patentability of the method of use steps is not dependent upon the particular claimed composition.

The requirement is still deemed proper and is therefore made FINAL.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 16, 18,19 are rejected under 35 U.S.C. 102(e) as being anticipated by Bara (US 6,548,850)

Bara teach multiple emulsions free of surfactant (column 5 lines 59-60). W/O/W emulsions are specified (column 5 line 55). Particulates as small as 0.1 micron are disclosed (column 7 lines 51-52). Cosmetic agents are specified (column 9 line 42).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 16, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bara in view of Gers-Barlag et al (US 2002/0077372).

Bara is discussed above. Bara further discloses inorganic particulate pigments and fillers (column 10 line 60 column 11 line 30).

Gers-Barlag et al teach that pigments less than 100 nm in size are advantageous as cosmetically and dermatologically acceptable (page 9 sentences 162-163). Hydrophilized silicon dioxide pigments are specified (page 9 sentence 167). Mixtures including silicon dioxide are disclosed (page 9 sentence 161).

It would have been obvious to one of ordinary skill to use the pigments of Gers-Barlag et al in the composition of Bara to achieve the beneficial effect of cosmetic acceptability.

No claims allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 571-272-0633. The examiner can normally be reached on M-F from 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Padmanabhan, can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Art Unit: 1616

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EDWARD J. WEBMAN  
PRIMARY EXAMINER  
GROUP 1500

<b>Notice of References Cited</b>	Application/Control No. 10/376,811	Applicant(s)/Patent Under Reexamination BARTHEL ET AL.	
	Examiner Edward J. Webman	Art Unit 1616	Page 1 of 1

**U.S. PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US-6,548,050	04-2003	Bara, Isabelle	424/64
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

**FOREIGN PATENT DOCUMENTS**

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

**NON-PATENT DOCUMENTS**

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

\*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)  
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

# Index of Claims



Application/Control No.

10/376,811

Examiner

Edward J. Webman

Applicant(s)/Patent under Reexamination

BARTHEL ET AL.

Art Unit

1616

✓	Rejected
=	Allowed

-	(Through numeral) Cancelled
+	Restricted

N	Non-Elected
I	Interference

A	Appeal
O	Objected

Claim		Date	
Final	Original	Final	Original
1	✓	51	
2	✓	52	
3	✓	53	
4	✓	54	
5	✓	55	
6	✓	56	
7	✓	57	
8	✓	58	
9	✓	59	
10	✓	60	
11	✓	61	
12	N	62	
13	N	63	
14	N	64	
15	N	65	
16	✓	66	
17	N	67	
18	✓	68	
19	✓	69	
20		70	
21		71	
22		72	
23		73	
24		74	
25		75	
26		76	
27		77	
28		78	
29		79	
30		80	
31		81	
32		82	
33		83	
34		84	
35		85	
36		86	
37		87	
38		88	
39		89	
40		90	
41		91	
42		92	
43		93	
44		94	
45		95	
46		96	
47		97	
48		98	
49		99	
50		100	

1000

Edward J. Webman

1616

[illegible]

INTERFERENCE SEARCHED			
Class	Subclass	Date	Examiner

[illegible]